

REMARKS

Introduction

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-30 are now pending in this application.

As per MPEP §1453, the enclosed claim listing shows changes relative to the US 6,480,568 patent issued Nov. 12, 2002, of which the current application is a reissue. Applicant notes that the claim listing found in Applicant's previous communication dated Dec. 11, 2007 did not follow the proper format for amendment of a reissue application. Applicant requests that the currently presented properly formatted claim listing replace the previously filed improperly formatted listing.

Reissue Declaration

The Examiner has rejected claims 1-30 as being based upon a defective reissue declaration under 35 U.S.C. 251. The Office Action states that the reissue oath/declaration filed with this application is defective "because it fails to identify at least one error which is relied upon to support the reissue application." A supplemental declaration is enclosed with this communication which obviates this issue.

The supplemental declaration states:

"...the '419 patent, which matured from application Serial No. 09/884,229, filed on June 19, 2001, [is] wholly or partly inoperative or invalid by reason of my claiming less than I had a right to claim in the patent. The following constitutes a statement of at least one error being relied upon as the basis for reissue under 37 CFR 1.175 (a)(1): Each of claims 1-21 appearing in the original 6,493,419 patent include, explicitly or through dependency, the limitation that the claimed device emit "therapeutic radiation." However, Applicant's specification provides support (e.g., col. 3 ll. 51-56, 57-65; col. 6 ll. 16-26, 27-41, 42-53, 54-66; col. 7 ll. 1-3) for

a device having a structure which produces radiation (e.g., x-rays) generically. Accordingly, claims 1-21 are too narrow." (Emphasis in original.)

Accordingly, the supplemental declaration now satisfies the requirements of 37 CFR 1.175 (a)(1) and 35 USC 251 by properly stating at least one error in the original claims (i.e. that claims 1-21 are too narrow because they include a limitation that the claimed device emit "therapeutic radiation"). In light of the above, Applicant requests reconsideration and withdrawal of the rejection under 35 USC 251 of the reissue declaration.

Applicant notes that the current application was accorded Rule 1.47(b) status by Senior Petitions Attorney John J. Gillon, Jr. in a communication dated July 15, 2005. The supplemental declaration is properly signed by Mark Lappin for sole inventor Mark Dinsmore under Rule 1.47(b).

Conclusion

Applicant believes that the present application is now in condition for allowance. Applicant submits that there is no proper basis for the rejection under 35 U.S.C. 251. Applicant also renews the arguments presented in previous responses, and submits that there is no proper basis for any rejection under 35 U.S.C. §112, or under 35 U.S.C. §§102 or 103 over the prior art of record. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date

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